

ADVERTISING AND RELATED SERVICES AGREEMENT

THIS ADVERTISING AND RELATED SERVICES AGREEMENT (the "Agreement") is effective as of December 31, 2003 (the "Effective Date"), by and between the TENNESSEE EDUCATION LOTTERY CORPORATION ("TEL"), a public corporation and state instrumentality created pursuant to the Tennessee Education Lottery Implementation Law (T.C.A. §§ 4-51-101 et seq.) (as may be amended from time to time, the "Act"), and GISH, SHERWOOD & FRIENDS a Tennessee Corporation ("Agency").

W I T N E S S E T H:

WHEREAS, the TEL was created to organize and operate a lottery in the State of Tennessee (the "Lottery");

WHEREAS, Agency, on behalf of itself and its "Subcontractors" (as defined in Section 3(a) hereof) (Agency and Subcontractors being sometimes referred to collectively as the "Agency Team"), submitted the proposal, dated December 12, 2003, incorporated herein by this reference (the "Proposal"), to the TEL in response to the TEL's Request for Proposals for Advertising and Related Services, dated December 3, 2003, incorporated herein by this reference (the "RFP"), as interpreted by TEL's answer to question concerning the RFP, which was made available by the TEL on its web site incorporated herein by this reference (the "Question and Answer"); and

WHEREAS, subject to the terms and conditions hereinafter set forth, the TEL desires to retain Agency to provide advertising and related and services to the TEL, and Agency desires to provide the same for the TEL;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the premises, the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereto hereby agree as follows:

1. SERVICES

Subject to the terms and conditions set forth in this Agreement, the TEL retains Agency to provide the advertising and related services to the TEL as contemplated by this Agreement, the Question and Answer, the RFP and the Proposal, and Agency agrees to render these services to the TEL. Notwithstanding anything herein to the contrary, in the event of an inconsistency or conflict among this Agreement, the Proposal, the Question and Answer and/or the RFP, the terms of this Agreement, as may be amended from time to time in accordance herewith, shall control the Answer, the terms of the Question and Answer shall control the RFP, the terms of the RFP shall control the Proposal, and the Act shall control the Proposal.

2. DUTIES AND RESPONSIBILITIES OF THE AGENCY TEAM

(a) The members of the Agency Team will work in conjunction and cooperation with the TEL and the other vendors, subcontractors, employees, agents, retailers and consultants of the TEL. The members of the Agency Team will provide advertising and related services to the TEL as detailed in this Agreement, the RFP, the Question and Answer and the Proposal and will perform such specific services (which constitute part of the advertising and related services) as requested, from time to time, orally or in writing, by the Chief Executive Officer (the "CEO"), or the CEO's designee(s), including, without limitation:

- i. developing a comprehensive advertising plan to support planned Lottery games and TEL's overall corporate image;
- ii. in conjunction with TEL, developing a budget for media, production and research;
- iii. as authorized by TEL, developing specific plans to maximize public awareness of the Lottery and its games and recommending budgetary savings where appropriate;
- iv. as authorized by TEL, implementing and satisfying all requirements of the creative and media plans, including the following:
 - A. creating and producing advertising materials for print, broadcast, point-of-sale and other media;
 - B. negotiating, purchasing and instructing for the placement of all time, space and other media;
 - C. verifying the publication of all requested media according to contracts and placement instructions; and
 - D. evaluating the performance of broadcast schedules as compared with ratings estimates;
- v. estimating all media and production expenditures in advance;
- vi. providing at least three (3) bids for outside supplier expenditures for printing, television production and merchandising purchases when such purchases exceed Five Thousand and No/100 dollars (\$5,000.00);

- vii. providing timely and accurate billing for all purchases and maintaining appropriate accounting records;
- viii. providing assurance that Agency will make no financial commitment on behalf of TEL without having prior, written approval from an authorized representative of TEL;
- ix. in conjunction with TEL, developing an advertising and marketing research plan;
- x. providing advice regarding ticket graphics and consumer testing of future Lottery game themes;
- xi. when requested by TEL, obtaining copyright and trademark registrations on behalf of TEL for all appropriate advertising materials;
- xii. assisting in negotiations for the production and telecasting of Lottery drawings;
- xiii. monitoring on behalf of TEL the performance of all media suppliers to ensure that all services purchased are delivered;
- xiv. research for sports sponsorship programs as set forth in the Proposal;
- xv. research for corporate campaign as set forth in the Proposal; and
- xvi. strategic planning as set forth in the Proposal.

(b) The members of the Agency Team shall meet regularly with the CEO or his/her designee(s) and shall establish work plans, implementation schedules and timetables for completion as and when required by the CEO or his/her designee(s).

(c) Agency hereby agrees to use its best efforts to make available to the TEL, to the extent required for the effective and timely performance of its obligations under this Agreement, such of its employees, and the employees of the other members of the Agency Team, as may be necessary or appropriate for the timely performance of the obligations of the Agency Team pursuant to this Agreement. No such employee of any member of the Agency Team shall undertake or participate in, during the term of this Agreement, any other engagement that will unreasonably interfere with the completion of the work contemplated by this Agreement. Agency will provide to the TEL, as requested from time to time, written reports of the names and work schedules of the employees of the Agency Team who will be performing services pursuant to this Agreement.

3. SUBCONTRACTORS

(a) No member of the Agency Team will subcontract or otherwise assign any or all of its duties or obligations under this Agreement to any individual or entity without the prior written consent of the TEL in each instance, which consent may be withheld in the TEL's sole discretion. Agency will provide the TEL with the name, qualifications, experience and expected duties of each proposed subcontractor under this Agreement each time it desires to retain a subcontractor. Any subcontractor that is approved by the TEL for work pursuant hereto will become a "Subcontractor" for purposes hereof and must execute such agreements or other documentation as may be necessary pursuant to the Act or as the TEL may require. Agency agrees that it will obtain the prior consent of the CEO or his/her designee(s) prior to having any Subcontractor perform any activities for TEL under this Agreement.

(b) Upon the request of the TEL, Agency will promptly provide the TEL with copies of all subcontracts and other agreements entered into by Agency with respect to its obligations under this Agreement. No such subcontract or other agreement may contain any terms or conditions inconsistent or in conflict with the terms and conditions contained in this Agreement. In the event of any such inconsistent or conflicting provisions, such inconsistencies or conflicts will be resolved in favor of this Agreement.

(c) The TEL shall have the right, at any time and from time to time, to instruct Agency not to use the services of any Subcontractor, individual or employee in connection with the work to be performed for the TEL under this Agreement, and Agency agrees to comply with all such instructions.

(d) Notwithstanding anything herein to the contrary, Agency will remain fully liable and responsible for all work to be performed under this Agreement, whether or not subcontracted to or performed by a Subcontractor or any other person or entity retained by Agency or under Agency's control, and Agency will ensure the compliance of its employees, and of each Subcontractor and such Subcontractor's employees, with the terms of this Agreement, the Act and all other applicable laws which govern the performance of services pursuant to this Agreement and such other standards or policies as the TEL may establish from time to time.

4. INDEPENDENT CONTRACTOR

(a) Both the TEL and Agency, in the performance of this Agreement, will be acting in their own separate capacities and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees, agents or partners of the other party for any purposes whatsoever. Neither party will assume any liability for any injury (including death) to any persons or any damage to any property or other claim arising out of the acts or omissions of the other party or any of its agents, employees or subcontractors. It is expressly understood and agreed that Agency is an independent contractor of the TEL in all manners and respects and that no member of

the Agency Team is authorized to bind the TEL to any liability or obligation or to represent that it has any such authority.

(b) Agency shall be solely responsible for all payments to Subcontractors and all compensation, withholding taxes and benefits for its employees and for providing all necessary unemployment and workmen's compensation insurance for its employees.

5. COMPENSATION

(a) As full and complete compensation for all goods and services provided by the Agency Team pursuant to this Agreement, the TEL will pay Agency, and Agency will accept on behalf of the entire Agency Team, an amount equal to eight percent (8%) of the TEL's total advertising budget for such year, as established by the TEL, in its sole discretion. The TEL currently anticipates that its total advertising budget will be equal to two percent (2%) of the TEL's gross sales. It is further anticipated under this Agreement that the TEL's gross sales will be approximately nine hundred million dollars (\$900,000,000.00) for the first full year of sales. Agency will collect no commission on media purchases and all such buys will be billed on a net basis. This percentage fee will include all expenses incurred by Agency and will serve as the Agency's sole source of compensation for this engagement.

(b) The estimated Agency fee will be billed to the TEL on a monthly basis and will be payable in twelve (12) installments. Within sixty (60) days of the end of the TEL's first fiscal year, June 30, 2004 and within sixty days of the end of every fiscal year thereafter, the TEL will adjust its advertising budget to reflect actual expenditures and adjust payments to the Agency in accordance therewith.

(c) Advertising media will be invoiced to Agency and Agency will invoice the TEL monthly after verification. Production billing will be itemized and invoiced by project. If necessary, in the case of a large project, Agency may request to invoice as work-in progress with 1/3rd of estimated cost at commencement, 1/3rd on the approval of camera ready art, and final detailed invoice on delivery.

(d) Subject to the availability of funds and any other restrictions imposed by the Act or this Agreement, the TEL will pay to Agency all uncontested amounts due under this Agreement within fourteen (14) business days of the date from which Agency's invoice is received, in accordance with procedures established by the TEL, subject to setoff or offset for all sums owed by the Agency Team to the TEL.

6. TERM

Unless sooner terminated in accordance with the provisions of Section 19 of this Agreement, and subject to the provisions of Section 25 hereof, the term of this Agreement shall commence as of the Effective Date of this Agreement and shall continue for an initial term of two (2) years (the, "Initial Term"). At the end of the Initial Term and each subsequent "Renewal Term" (as hereinafter defined), as the case may be, the term of this Agreement shall be automatically renewed and extended for a period of one (1) year (a

“Renewal Term”) unless either party hereto delivers a written termination notice to the other party at least thirty (30) days prior to the end of the Initial Term or the then current Renewal Term, as the case may be.

7. WORK STANDARD

(a) Agency hereby agrees that all members of the Agency Team shall at all times comply with and abide by all terms and conditions set forth in this Agreement, the applicable Regulations, Policies and Procedures of the Tennessee Education Lottery Corporation (as may be amended from time to time, the “TEL Policies”), and all requirements of the Act. Agency further agrees that all members of the Agency Team shall perform their respective duties and responsibilities as set forth in this Agreement by following and applying the highest professional and technical guidelines and standards.

(b) Agency hereby agrees that all members of the Agency Team will perform their respective duties and responsibilities as set forth in this Agreement with integrity and dignity and free from political influence, collusion and fraud. Agency further agrees that no members of the Agency Team will solicit or accept, or attempt to solicit or accept, any bribes or other inducements from any offeror, supplier, manufacturer or subcontractor in connection with the performance of its obligations under this Agreement.

(c) If the TEL becomes dissatisfied with the work product of, or the working relationship with, any of the individuals assigned to perform services under this Agreement by any member of the Agency Team, the TEL may require, by a writing signed by the CEO or his/her designee(s), or other appropriate means of notification, the replacement of any or all of such individuals as soon as is reasonably practicable. Personnel identified in the Proposal as performing services under this Agreement will continue to perform such services in their designated capacities until such services are completed unless they cease to be employed by a member of the Agency Team or unless the TEL requests their removal, in which case a person or persons of suitable competency and acceptable to the TEL, in its discretion, will be substituted forthwith.

(d) Nothing in this Section 7 shall be construed to prevent Agency from using the services of others to perform tasks ancillary to those tasks that directly require the expertise of such key personnel, including secretarial, clerical and common labor duties. Agency shall at all times remain responsible for the performance of all necessary tasks under the scope of this Agreement, whether performed by Subcontractors, key personnel or other workers.

(e) Nothing in this Agreement shall prohibit the TEL from retaining the services of any individual or entity to perform any services on its behalf, whether or not such or similar services were initially contemplated to be performed by a member of the Agency Team. The TEL is not prohibited by this Agreement from retaining the services of any individual or entity to perform any services it requires, and it is under no obligation to exclusively use the services of the Agency Team.

(f) Agency shall designate an individual, who is acceptable to the TEL, as Agency's primary contact with the TEL for purposes of this Agreement.

8. PROGRESS REPORTS

To assure the TEL that its work under this Agreement is progressing and is being performed in a manner consistent with the TEL's wishes, Agency will meet with the CEO or designee daily prior to the commencement of the sale of instant and on-line tickets and at least weekly thereafter. If requested, Agency shall submit written progress reports to the TEL covering all work performed by all members of the Agency Team, in form and substance satisfactory to the CEO.

9. CHANGES IN WORK; AMENDMENTS

(a) By written order by the CEO or his/her designee(s) to the Agency, the TEL may, from time to time, make changes in the services to be provided by the Agency Team or the manner or place of delivery or performance of such services or any requested deliverables; provided, however, to the extent any such changes in services or deliverables are outside the scope of any of this Agreement, the RFP, the Answer or the Proposal, the TEL and Agency shall in good faith negotiate mutually acceptable terms and compensation, which shall be memorialized in a written amendment to this Agreement clearly detailing the additions, deletions, and modifications thereto, and signed by both parties.

(b) The applicable members of the Agency Team shall promptly comply with such change order(s) and take all necessary or appropriate actions to effect such change.

(c) Failure to agree to any change shall constitute a "dispute" under Section 22 hereof. However, nothing in this clause shall excuse the Agency from proceeding with the Agreement as changed, and Agency's sole recourse shall be through the procedures set forth in such Section 22.

10. BOOKS AND RECORDS

(a) Within six (6) months of the end of the Agency's fiscal year, the Agency shall provide to the TEL a copy of its audited financial statements for such year, together with the opinion of its independent public accounting firm with respect to such financial statements. In the event such an opinion is not expressed without reservation or qualification with respect to Agency's audited financial statements, and the reasons for any such reservation or qualification are determined by the TEL, in its sole and reasonable judgment, to be reasonably likely to materially affect the performance of Agency under this Agreement, Agency shall be deemed to have breached this Agreement, which shall give rise to the TEL's termination rights pursuant to Section 19 of this Agreement.

(b) The Agency Team shall maintain documentation for all charges against the TEL under this Agreement or any modifications or amendments thereto. The books, documents, papers, accounting records and other evidence pertaining to

products and/or services to be provided or performed or money received under this Agreement (A) shall be maintained for a period of five (5) full years from the date of the final payment and (B) shall be subject to audit or inspection at any reasonable time and upon reasonable notice by the TEL or its duly appointed representatives, including without limitation the Comptroller of the Treasury of the State of Tennessee. Agency shall make such materials available at its offices, and copies thereof shall be furnished to the TEL or its duly appointed representative by the Agency, at no cost to the TEL or its duly appointed representative, if requested by the TEL or its duly appointed representative. Such records shall be maintained in accordance with any applicable provisions of generally accepted accounting principles (or other applicable accounting principles or policies) and any other applicable procedures established by the TEL from time to time.

11. CONFIDENTIALITY; OWNERSHIP OF WORK PRODUCT

(a) For purposes of this Agreement, "TEL Confidential Information" means any and all items or information of the TEL which are: (i) marked "Confidential" or some such similar designation; or (ii) valuable, proprietary and confidential information belonging to or pertaining to the TEL or the Lottery that does not constitute a "Trade Secret" (as defined under applicable law) and that is not generally known to the public but is generally known only to the TEL and those of its employees, independent contractors or agents to whom such information must be confided for business purposes, including, without limitation, information regarding the TEL's customers, suppliers, manufacturers and distributors. Notwithstanding the foregoing, TEL Confidential Information shall not include TEL information that is: (A) documented as being generally known to the public other than due to a disclosure by Agency or any member of the Agency Team; (B) documented as being already known to Agency at the time it is disclosed by the TEL to Agency; (C) documented as having been independently developed by Agency; (D) documented as having been received by Agency from a third party that Agency believed in good faith had the right to make such disclosure; or (E) subject to disclosure under the Tennessee Public Records Act, Tenn. Code Ann. § 10-7-101 et seq. (the "Public Records Act")

(b) For purposes of this Agreement, "Agency Confidential Information" means any and all items or information of Agency which are: (i) marked "Confidential" or some such similar designation; or (ii) valuable, proprietary and confidential information belonging to or pertaining to Agency that does not constitute a trade secret and that is not generally known to the public but is generally known only to Agency and those of its employees, independent contractors or agents to whom such information must be confided for business purposes, including, without limitation, information regarding Agency's customers, suppliers, manufacturers and distributors. Notwithstanding the foregoing, Agency Confidential Information shall not include Agency information that is: (A) documented as being generally known to the public other than due to a disclosure by the TEL; (B) documented as being already known to the TEL at the time it is disclosed by Agency to the TEL; (C) documented as having been independently developed by the TEL; or (D) documented as having been received by the TEL from a party that the TEL believed in good faith had the right to make such disclosure.

(c) Agency acknowledges that the TEL is subject to the Public Records Act. In view thereof, the parties agree that the TEL shall advise Agency of any request for inspection of records under the Public Records Act that seeks Agency Confidential Information prior to making a decision to disclose such information and provide Agency with an opportunity to respond to such request. If the TEL determines that any such Agency Confidential Information should be disclosed, the TEL shall promptly so notify Agency and shall not disclose the information until 4:30 p.m. of the third business day following the date the Public Records request was originally received by the TEL, unless earlier disclosure is required under the Public Records Act. Unless otherwise required by court order or direction, no disclosure shall be made while legal proceedings regarding the issue of disclosure are pending. Any disclosure may be made under such limiting conditions, as the TEL shall determine appropriate.

(d) In recognition of the need of the TEL to protect its legitimate business interests, Agency hereby covenants and agrees that with regard to any: (i) TEL Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) Trade Secrets, at all times such information remains a "trade secret" under applicable law, Agency and all other members of the Agency Team will regard and treat all such items or information as strictly confidential and wholly owned by the TEL and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such TEL Confidential Information or Trade Secrets to any individual or entity for any purpose other than in accordance with this Agreement or pursuant to the instructions from a duly authorized representative of the TEL. In addition, to the extent the Act or any other applicable law imposes any greater restrictions or prohibitions with respect to any TEL Confidential Information, Trade Secrets or other information or property of the TEL, Agency covenants and agrees that it and all members of the Agency Team shall comply with such greater restrictions or prohibitions. To ensure the compliance by it and all members of the Agency Team with the provisions of this Section 11(d), Agency shall use its best efforts, including, without limitation, obtaining written confidentiality agreements with all other members of the Agency Team which incorporate requirements no less restrictive than those set forth herein and which contain provisions which permit the TEL to independently enforce the requirements set forth in such agreements.

(e) In recognition of the need of Agency to protect its legitimate business interests, the TEL hereby covenants and agrees that with regard to any: (i) Agency Confidential Information, at all times during the term of this Agreement and for a period of three (3) years following the expiration or termination of this Agreement for any reason; and (ii) Agency trade secrets (as defined by applicable law), at all times such information remains a "trade secret" under applicable law, the TEL will regard and treat all such items or information as strictly confidential and wholly owned by Agency and will not, for any reason or in any fashion, either directly or indirectly use, disclose, transfer, assign, disseminate, reproduce, copy, or otherwise communicate any such Agency Confidential Information or Agency "trade secrets" to any individual or entity for any purpose other than in accordance with this Agreement, pursuant to the instructions from a duly authorized representative of Agency or except to the extent necessary to fulfill the purposes of this Agreement or conduct the Tennessee

Lottery. The TEL shall not be liable, however, to Agency or to any other person or entity, if despite the TEL's best efforts, Agency Confidential Information is disclosed in breach of the foregoing. Notwithstanding anything herein to the contrary, the entirety of Section 1.5 of the RFP shall supersede and control any provision of this Agreement and the TEL's obligations and liabilities shall never be greater than as set forth in Section 1.5 of the RFP.

(f) All work product, property, data, documentation or information or materials conceived, discovered, developed or created by Agency or any member of the Agency Team pursuant to this Agreement exclusively and specifically for the TEL and solely for the TEL's use (collectively, the "Work Product") shall be owned exclusively by the TEL. Notwithstanding the foregoing, nothing contained herein shall limit or be deemed to limit any member of the Agency Team's intellectual property ownership rights in its basic, unmodified proprietary software systems that are generally provided to its customers. To the greatest extent possible, any Work Product shall be deemed to be a "work made for hire" (as defined in the Copyright Act, 17 U.S.C.A. § 101 et seq., as amended) and owned exclusively by the TEL. Agency hereby unconditionally and irrevocably transfers and assigns to TEL, and Agency shall cause all members of the Agency Team and others it or members of the Agency Team retains to irrevocably transfer and assign to the TEL, all right, title and interest in or to any Work Product, including, without limitation, all patents, copyrights, trade secrets, trademarks, service marks and other intellectual property rights therein, including all rights, title and interest in and to it and all drafts, revisions, arrangements, adaptations, derivative works, and other versions of the Work Product that may heretofore have been created or that may hereafter be created and any other rights subsequently created. The TEL, or its designee(s), shall have the exclusive right to secure registration and protection of the Work Product in its name, or otherwise, as the TEL may desire, as the author and owner of the Work Product and to secure any and all renewals and extensions of copyright, trademark and service mark, if any, throughout the world under any present or future laws. Agency expressly and forever waives, and shall cause all members of the Agency Team to expressly and forever waive, any and all moral rights any of them may have in the Work Product in favor of the TEL. Agency agrees to execute and deliver to the TEL, and to cause all members of the Agency Team and others it or members of the Agency Team retains to execute and deliver, any transfers, assignments, documents or other instruments which the TEL may deem necessary or appropriate, from time to time, to vest complete title and ownership of any Work Product, and all intellectual property and other rights therein, exclusively in the TEL. In the event Agency or any member of the Agency Team is unable or unwilling to execute such documents, Agency hereby irrevocably appoints, and shall cause each member of the Agency Team to irrevocably appoint, the TEL as its attorney-in-fact to perform such duties, such right being coupled with an interest. Without limiting the generality of the foregoing, the TEL and/or its designee(s) shall have all rights of a copyright owner of the Work Product as set forth in Section 106 of the Copyright Act (17 U.S.C.A. § 101 et seq., as amended). If, at any time, Agency or any member of the Agency Team is granted the right to recapture any right, title or interest in or to the Work Product by any present or future law throughout the world, Agency hereby agrees and shall cause each member of the Agency Team to agree to reassign such right, title or interest to the TEL for the entire duration of such right, title or interest. During the performance of the services specified herein, Agency shall

be responsible for any loss or damage to any Work Product while in the possession of Agency or any member of the Agency Team, and any loss or damage thereto shall be restored at Agency's expense. The TEL shall have full, immediate and unrestricted access to all Work Product during the term of this Agreement.

(g) The Agency grants to the TEL a perpetual, royalty free license to use any and all proprietary materials owned by it and used in connection with the performance of the Contract, and the Agency agrees to grant to the TEL the necessary rights and authority to modify such proprietary materials in any manner the TEL deems necessary. It is the intent of the TEL that it have control over all such proprietary materials in a manner consistent with ownership thereof.

12. COMMITMENT TO NONDISCRIMINATION

(a) Each member of the Agency Team hereby covenants and agrees that no person shall (A) be excluded from participation in, or be denied benefits of, this Agreement, or (B) be excluded from employment, denied any of the benefits of employment or otherwise be subjected to discrimination on the grounds of handicap or disability, age, race, color, religion, sex, national origin or ancestry, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Agency shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination. The Agency's breach of this covenant shall constitute a material breach of this Agreement.

(b) Any and all contracts executed by and between the Agency and any other member of the Agency Team shall specifically state that no member of the Agency Team shall discriminate against any employee or applicant for employment because of his or her handicap or disability, age, race, color, religion, sex, national origin or ancestry, or any other classification protected by federal, Tennessee state constitutional, or statutory law. Agency's breach of this covenant, or Agency's failure to enforce against the other members of the Agency Team any provision of such covenant, shall constitute a material breach of this Agreement.

(c) Each member of the Agency Team shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap, disability, national origin or ancestry.

(d) Consistent with the Act, TEL Policies, and the TEL EBO Program, Agency agrees to make every reasonable effort to include participation by minority businesses in the performance of its services pursuant hereto. Specifically, and without limitation, any human resources services performed for the TEL or the Agency will include appropriate attention to the hiring and training of qualified minority applicants in accordance with the Act and all policies and procedures adopted by the TEL from time to time. In addition, in accordance with the Act, Agency agrees to strive to maximize participation of minority-owned businesses to achieve the statutory minimum goal of fifteen percent (15%).

(e) Consistent with the Act and the TEL Policies, and in accordance with the RFP Section 4.14, Commitment to Non-Discrimination Agency has submitted the document attached hereto as Exhibit A and incorporated herein by reference.

13. LIMITATION OF LIABILITY

THE PAYMENT OBLIGATIONS UNDERTAKEN BY THE TEL UNDER THIS AGREEMENT ARE SUBJECT TO THE AVAILABILITY OF FUNDS TO THE TEL. THERE SHALL BE NO LIABILITY ON THE PART OF THE TEL EXCEPT TO THE EXTENT OF THEN AVAILABLE FUNDS PERMITTED TO BE PAID FROM THE PROCEEDS OF LOTTERY OPERATIONS. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES WILL THE STATE OF TENNESSEE, ITS GENERAL FUND OR ANY OF ITS AGENCIES OR POLITICAL SUBDIVISIONS BE RESPONSIBLE OR LIABLE AS A RESULT OF THIS AGREEMENT OR ANY LIABILITY CREATED HEREBY OR ARISING HEREUNDER.

14. ANTITRUST ACTIONS

Agency hereby conveys, sells, assigns and transfers to the TEL all of its right, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States of America and the State of Tennessee relating to the advertising and related services acquired by the TEL under this Agreement.

15. COMPLIANCE WITH LAWS

Agency agrees to comply with all applicable rules, procedures and regulations adopted from time to time by the TEL under the Act, including but not limited to the TEL Policies, and all other applicable federal, state and local laws, rules, regulations, ordinances or executive orders, including, without limitation, all labor, employment and anti-discrimination laws, and all provisions required thereby to be included herein are hereby incorporated by reference (all of the foregoing being sometimes referred to collectively as the "Governing Laws and Regulations").

16. REPRESENTATIONS, WARRANTIES AND COVENANTS

Agency hereby represents and warrants to the TEL, on its own behalf and on behalf of each member of the Agency Team, as follows:

(a) Agency and each other member of the Agency Team are and will remain at all times during the term of this Agreement duly organized and in good standing under the laws of the respective jurisdictions under which they are organized or incorporated. Agency and each other member of the Agency Team have the power and authority to execute and deliver and perform their obligations under this Agreement, and Agency and each other member of the Agency Team have taken all necessary and appropriate action to authorize the execution and delivery of this Agreement and the performance of their obligations under this Agreement. The execution and delivery of this Agreement and the performance of their obligations under this Agreement are not in contravention of any provisions of law or any material

indenture or agreement by which Agency or any other member of the Agency Team is bound and do not require the consent or approval of any governmental body, agency, authority or other person or entity which has not been obtained. This Agreement constitutes the valid and legally binding obligation of Agency and each other member of the Agency Team, enforceable against them in accordance with its terms.

(b) Agency and each other member of the Agency Team have disclosed or will disclose to the TEL all matters required to be disclosed under the Governing Laws and Regulations. In addition, Agency and each member of the Agency Team recognize and acknowledge that there are certain limitations on their activities, and the activities of their subcontractors, now and in the future, including, but not limited to, limitations on the ability to enter into or perform contracts or other arrangements with certain third parties, and limitations on the ability to purchase lottery tickets, all of which shall be observed. Some of these restrictions also apply to the employees of the members of the Agency Team and the members of such employees' households, and each member of the Agency Team will enforce such restrictions upon its employees and subcontractors.

(c) Neither Agency, the Subcontractors, nor any of its or their respective officers, directors, partners or major shareholders has ever been found guilty of a felony related to the security or integrity of any lottery or gaming operation in any jurisdiction.

(d) Neither Agency, the Subcontractors, nor any of its or their respective officers, directors, partners or major shareholders has an ownership interest in any entity that has supplied consultation services under contract to the TEL with respect to the RFP.

(e) No "public officer" (as defined in T.C.A. § 8-50-501(a)), or an employee of such officer, has an ownership interest of one percent (1%) or more in Agency or any of the other members of the Agency Team.

(f) No employee of the TEL has a financial interest in the Agency or any of the other members of the Agency Team.

(g) To the extent required by applicable law, Agency and each member of the Agency Team are, and will remain at all times during the term of this Agreement, qualified to do business in the State of Tennessee.

(h) All Work Product: (i) shall be prepared, worked on and completed solely by employees of Agency or a member of the Agency Team in the scope of their employment or by independent contractors of Agency or a member of the Agency Team working under the strict and direct supervision of such employees; (ii) shall be original works of authorship; (iii) shall not infringe, plagiarize, pirate or constitute misappropriations, infringements or unauthorized uses or disclosures of any copyrights, trademarks, service marks, trade names, confidential information, trade secrets or other intellectual properties or proprietary rights of any individuals or entities; and (iv) shall not be false, misleading, actionable, defamatory, libelous or constitute an invasion of privacy of any individual or entity. To the extent that any

Work Product is prepared, worked on or completed by independent contractors of Agency, or a member of the Agency Team, Agency shall be responsible for seeing that all independent contractors of Agency, or of any member of the Agency Team, execute and deliver to the TEL any transfers, assignments, documents or other instruments which the TEL may deem necessary or appropriate from time to time, to vest complete title and ownership of the Work Product, and all intellectual property and other rights therein, exclusively in the TEL.

(i) Neither Agency nor any other member of the Agency Team, nor any of its or their respective employees, officers, directors, partners or major stockholders, shall issue any press release, conduct any press or news conference, participate in any media interview or otherwise make any public statement or announcement on behalf of, with respect to or in connection with this Agreement or the TEL without the express prior written consent of the CEO or his/her designee(s) in each instance.

(j) Neither Agency nor any other member of the Agency Team, nor any of its or their respective employees, officers, directors, partners or major stockholders, shall use the TEL's names, trademarks, service marks, logos, images or any other information or data related to the services to be provided pursuant to this Agreement as a part of or in connection with any commercial advertising or proposal without the express prior written consent of the CEO or his/her designee(s) in each instance.

(k) All products and services provided by the Agency Team used in connection with this Agreement shall in all respects meet the requirements, performance standards and specifications of the RFP, the Proposal, the Answer and this Agreement.

17. OBLIGATIONS OF AGENCY

(a) Agency shall provide to the TEL on an annual basis updated certificate(s) of existence showing that it and each member of the Agency Team are qualified to transact business in the State of Tennessee.

(b) Agency agrees to fully disclose to the TEL all matters materially affecting the TEL, this Agreement or the performance of this Agreement and all matters reasonably necessary to perform background and security investigations with respect to Agency, the Subcontractors, their respective officers, directors, partners, major shareholders and employees, and the individuals performing services pursuant to this Agreement or otherwise for the benefit of the TEL. In addition, Agency acknowledges that some or all of its employees, officers, directors, partners and major shareholders, and its approved subcontractors and their respective employees, officers, directors, partners and major shareholders, may be required to submit to background and other investigations, and Agency shall cause any such individuals or subcontractors to fully cooperate with any such investigations and to provide all necessary information and authorizations in connection therewith. Agency further agrees that it will routinely and continuously update all information disclosed to the TEL pursuant to this Agreement or the RFP, including, without limitation, the

representations and warranties set forth in Section 16 hereof, no less often than quarterly; provided, however, Agency shall immediately notify TEL upon the occurrence of any event the effect or results of which Agency would be required to disclose, or to update a previous disclosure, to TEL under this Agreement or the RFP and which is reasonably likely to materially affect the TEL, Agency, the Subcontractors, any of their respective officers, directors, partners, major shareholders or employees, this Agreement or the performance of this Agreement.

(c) Agency must, contemporaneously with the execution of this Agreement, post with the TEL a performance bond or letter of credit in an amount equal to \$2 Million Dollars (\$2,000,000.00), unless such bond or letter of credit is replaced by alternate security as authorized under T.C.A. § 4-51-114. Evidence of any renewed bond must be provided within five (5) days prior to the expiration of the then existing bond. All bonds required of Agency by this Agreement must be issued by companies or financial institutions which are financially rated A or better by a nationally recognized rating agency and duly licensed, admitted and authorized to transact business in the State of Tennessee. The security provided by Agency pursuant to this Section 17(c) shall provide funds to the TEL in the event the TEL suffers any liability, loss, damage or expense as a result of Agency's failure to fully and completely perform all of the requirements contained in this Agreement.

(d) Agency shall lease office space from the TEL at the TEL's main office, under the same terms and conditions as required by the TEL from its landlord—USAA Realty Company—or its successors and assigns. Agency shall allow any authorized representative of the TEL to inspect upon reasonable prior notice, the places of business and other facilities of Agency and other members of the Agency Team that are being used in connection with the performance of this Agreement.

(e) Agency and each other member of the Agency Team shall establish and enforce a code of conduct for their respective employees, vendors, suppliers and independent contractors to ensure that Agency and each other member of the Agency Team comply with the rules and procedures established by the TEL.

(f) Agency and each other member of the Agency Team will promptly disclose all written and oral agreements any of them have with any lobbyists or consultants working on their behalf in the State of Tennessee or before the United States government, and, upon the request of the TEL, they will immediately provide copies thereof to the TEL. Notwithstanding anything else contained herein to the contrary, TEL may terminate this Agreement immediately upon notice to Agency in the event Agency or any other member of the Agency Team fails to comply with the provisions of this Section 17(f).

(g) Agency has agreed to provide an Equal Business Opportunity ("EBO") Program, which will include minority subcontracting opportunities and business development as outlined in Exhibit A, along with a job training internship program focused on students majoring in the communication's curriculum at Tennessee State University. While this educational joint venture will generate income for the participants, the ultimate goal is to provide significant on-the-job training leading to the development of

skills useful in obtaining permanent employment with Agency, the TEL or other corporations both within and outside the lottery industry. Agency's EBO Program shall generate a minority business participation level of at least fifteen percent (15%). Agency will submit on a monthly basis, and in connection with its final payment request, EBO Form "E", included as Attachment G to the RFP, certifying all payments made to Minority-Owned Businesses. In addition, Agency will provide the TEL with quarterly reports detailing its activities in compliance with its total EBO efforts. Agency's EBO Program will be reviewed annually after September 1, 2004 and failure to comply with the terms of this Section may be deemed a breach, which shall give rise to the TEL's termination rights pursuant to Section 19 of this Agreement.

18. TAXES

The TEL will not be responsible for any taxes levied on Agency or any member of the Agency Team as a result of the execution, delivery or performance of this Agreement. Agency shall pay and discharge any and all such taxes in a timely manner. Subject to any sales or use tax exemption, deduction or credit that is available, which Agency hereby agrees to utilize, take and apply, Agency will pay any sales or use taxes properly due and payable in connection with its deliverables to the TEL pursuant to this Agreement and items which are acquired for and utilized and provided exclusively and directly to the TEL pursuant to this Agreement. To the extent any such sales or use taxes are in the TEL's reasonable opinion properly due and paid by Agency, the TEL shall promptly reimburse Agency. To the extent of any questions or conflicts with respect to the application or interpretation of any sales or use taxes, the TEL and Agency shall in good faith reach a mutually agreed upon resolution with respect thereto.

19. TERMINATION

(a) Notwithstanding anything herein to the contrary, TEL may cancel and terminate this Agreement (i) if Agency fails to correct or cure any breach of any of Sections 7(b), 16(c), 16(d), 16(e), 16(h), 17(b), 17(c), or 17(g) of this Agreement (the "Major Sections") within seventy-two (72) hours of the earlier of: (A) Agency having knowledge of such breach or such time at which Agency should have reasonably known of such breach; or (B) Agency receiving oral or written notice of such breach from TEL; or (ii) if Agency fails to correct or cure any breach of any other provisions or Sections of this Agreement, other than Major Sections, after ten (10) calendar days' prior written notice from TEL.

(b) If TEL, after thirty (30) calendar days prior written notice from Agency, fails to correct or cure any material breach of this Agreement, then Agency may cancel and terminate this Agreement and in due course collect monies properly due up to and including the date of such termination.

(c) In the event that either party hereto is unable to perform any of its obligations under this Agreement, or to enjoy any of its benefits because of natural disaster, actions or decrees of governmental bodies, or other events of force majeure

not the fault of the affected party, the affected party shall immediately give notice to the other party and shall use its best efforts to resume performance. Upon receipt of such notice, each party's obligations under this Agreement shall be immediately suspended. Any such causes of delay or failure shall, in the exercise of reasonable diligence, extend the period of performance, for a reasonable period, until after such causes of delay or failure have been removed. However, if delays resulting from any foregoing causes extends for more than one hundred eighty (180) days and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, including adjustment for price, then either party, upon thirty (30) days written notice may terminate this Agreement and in due course collect monies properly due up to and including the date of such termination.

(d) Notwithstanding anything herein to the contrary, upon the termination of this Agreement for any reason, Agency and all other members of the Agency Team shall:

- i. stop all work under this Agreement on the date of such termination;
- ii. place no further orders or subcontracts for materials, services, or facilities except as otherwise requested by TEL;
- iii. assign to TEL effective on the date of such termination, in the manner, at the times and to the extent specified by TEL, all of Agency's and the other Agency Team members' right, title, and interest in and to any agreements with respect to the Lottery to which Agency or any such other member is a party;
- iv. settle all outstanding liabilities and all claims relating to the performance of its obligations under this Agreement arising out of such termination of orders and subcontracts, with the approval or ratification of TEL to the extent TEL may require;
- v. upon the effective date of termination of this Agreement and the payment by TEL of all items properly chargeable to TEL hereunder, Agency and each member of the Agency Team shall transfer, assign, and make available to TEL all property and material belonging to TEL, all rights and claims to any and all reservations, contracts and arrangements with owners of advertising media, or others, for the advertising space, time or materials yet to be used, and shall make available to TEL all written information regarding TEL's advertising. No extra compensation is to be paid to Agency or any member of the Agency Team for its services in connection with any such assignment. Concurrently with such assignment, TEL may, in its sole discretion, assume the obligations, if any, of Agency or such

- other member of the Agency Team on all such assigned reservations, contracts and arrangements;
- vi. upon termination of this Agreement by TEL, Agency and each other member of the Agency Team shall be deemed to have released and relinquished to TEL any and all claims or rights they may otherwise have to common law or statutory copyright and any other rights with respect to all or any part of any unpublished materials prepared or created by Agency or such other member of the Agency Team in the course of its performance hereunder;
 - vii. complete performance of such part of the work to be performed under this Agreement as TEL shall request; and
 - viii. take such action as may be necessary, or as TEL may specify, to protect and preserve any property related to this Agreement which is in the possession of Agency or any member of the Agency Team and in which TEL has or may acquire an interest.

20. INDEMNIFICATION

(a) Agency agrees to indemnify, defend and hold harmless the TEL, its directors and officers, the State of Tennessee and its agencies and political subdivisions, and their respective agents, officers and employees, against any and all suits, damages, expenses (including, without limitation, court costs, attorneys' fees and other damages), losses, liabilities and claims of any kind, caused by or resulting from any breach of this Agreement by any member of the Agency Team or any other act or omission of Agency, the Subcontractors, any member of the Agency Team or any of its or their respective agents or employees, whether the same may be the result of negligence, responsibility under strict liability standards, any other substandard conduct or otherwise.

(b) Agency agrees to indemnify, defend and hold harmless the TEL, its directors and officers, the State of Tennessee and its agencies and political subdivisions, and their respective agents, officers and employees, against any and all suits, damages, expenses (including, without limitation, court costs, attorneys' fees and other damages), losses, liabilities and claims of any kind, arising out of, in connection with or resulting from the development, possession, license, modifications, disclosure or use of any copyrighted or non-copyrighted composition, trademark, service mark, service process, patented invention or idea, confidential information, trade secret, article or appliance furnished to the TEL, or used in the performance of this Agreement, by any member of the Agency Team.

21. DISPUTE RESOLUTION PROCEDURES

Any and all claims, disputes or controversies arising in connection with this Agreement must be made in accordance with the Tennessee Education Lottery

Corporation – Dispute Resolution Procedures established by the TEL Board of Directors (as the same may be amended from time to time).

22. NOTICES

(a) All notices and statements provided for or required by this Agreement shall be in writing, and shall be delivered personally to the other designated party, or mailed by certified or registered mail, return receipt requested, or delivered by a recognized national overnight courier service, as follows:

If to TEL: Tennessee Education Lottery Corporation
Plaza Tower, MetroCenter
200 Athens Way
Nashville, Tennessee 37228
Attn: Rebecca G. Paul, Chief Executive Officer

If to Agency: Gish, Sherwood & Friends
4235 Hillsboro Road
Nashville, TN 37215
Attn: Jeff Lipscomb, President

(b) Either party hereto may change the address or individual to which notice is to be sent by written notice to the other party in accordance with the provisions of this Section 22.

23. MISCELLANEOUS

(a) This Agreement, together with the Proposal, the Question and Answer and the RFP, all of which are incorporated herein by reference, contains the entire agreement and understanding concerning the subject matter hereof between the parties hereto. No waiver, termination or discharge of this Agreement, or any of the terms or provisions hereof, shall be binding upon either party hereto unless confirmed in writing. This Agreement may not be modified or amended, except by a writing executed by both parties hereto. No waiver by either party hereto of any term or provision of this Agreement or of any default hereunder shall affect such party's rights thereafter to enforce such term or provision or to exercise any right or remedy in the event of any other default, whether or not similar.

(b) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TENNESSEE, AND ANY CAUSE OF ACTION ARISING HEREUNDER MUST BE BROUGHT IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE. AGENCY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY PROCEEDING WHICH IS BROUGHT IN SUCH A COURT.

(c) Agency shall not assign this Agreement, in whole or in part, without the prior written consent of the TEL, and any attempted assignment not in

accordance herewith shall be null and void and of no force or effect. For purposes of this Section 23(c), the transfer or sale of a controlling equity interest in, or substantially all of the assets of, Agency will be deemed an assignment for which the TEL's consent is required.

(d) This Agreement shall be binding on and inure to the benefit of Agency, and its Subcontractors, successors and permitted assigns.

(e) The headings contained herein are for the convenience of the parties only and shall not be interpreted to limit or affect in any way the meaning of the language contained in this Agreement.

(f) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any telecopy or other facsimile transmission of any signature shall be deemed an original and shall bind such party.

(g) If any provision of this Agreement shall be held void, voidable, invalid or inoperative, no other provision of this Agreement shall be affected as a result thereof, and accordingly, the remaining provisions of this Agreement shall remain in full force and effect as though such void, voidable, invalid or inoperative provision had not been contained herein.

(h) Upon the request of the TEL, Agency agrees to take, and to cause any other member of the Agency Team to take, any and all reasonable actions, including, without limitation, the execution of certificates, documents or instruments, necessary or appropriate to give effect to the terms and conditions set forth in this Agreement.

24. ADDITIONAL SERVICES

In the event the TEL desires to retain the services of Agency for activities in addition to those contemplated by this Agreement, payment therefore shall be as agreed upon by the parties. Any such services, the rates, and the terms of payment shall be approved, in writing, prior to the commencement of any such additional work. In no event shall Agency or any member of the Agency Team be paid for work not authorized, or for work in excess of that authorized, in writing by the TEL.

25. REQUIRED INVESTIGATIONS

The TEL and Agency hereby agree that this Agreement, and all of the terms and conditions contained herein, is subject to the completion of all criminal and other background investigations required by the Act or the TEL Policies. This Agreement will not be binding upon the TEL until the completion of all such investigations.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement to be effective as of the day and year first above written.

“TEL”

TENNESSEE EDUCATION LOTTERY
CORPORATION

By: _____

Its: _____

“Agency”

By: _____

Its: _____

EXHIBIT A

COMMITMENT TO NON-DISCRIMINATION

**TENNESSEE EDUCATION LOTTERY CORPORATION
EQUAL BUSINESS OPPORTUNITY PROGRAM
EBO FORM B**

**MINORITY-OWNED BUSINESS UTILIZATION PLAN
(TO BE SUBMITTED WITH THE BID/PROPOSAL)**

Company: Gish, Sherwood & Friends
RFP: Advertising and Related Service

Gish, Sherwood & Friends, certifies that on the following procurement opportunity, Advertising and Related Services, the following minority-owned businesses will be utilized as subcontractors, vendors, suppliers, or provide professional services:

Name	Description of Work	Contract Value	Joint Venture (Yes/No)	% of Minority Ownership	Certified (Yes/No)	Certification Agency
Hall Communications, Inc.	Marketing Consulting	\$354,000	Yes	100%	Yes	Knoxville Transit Authority
Ibis Communications, Inc.	Communications Consulting	\$936,000	Yes	100%	Yes	TMSDC
IMAGES USA	Marketing/Mkt. Research	\$936,000	Yes	100%	Yes	TMSDC
Wordgraphics, Inc.	Graphic Design/Advertising	\$702,000	Yes	100%	Yes	MMBC
HBCU Internship Program	Job Training	\$8000.00		N/A	N/A	N/A

TOTAL COMMITMENT VALUE: \$2,936,000.00 over the two-year initial term of this Agreement. Vendor's compensation under this Agreement is based on a percentage of the TEL's advertising budget; consequently the contract values noted herein are estimates based on anticipated budget amounts.

TOTAL % OF MINORITY BUSINESS PARTICIPATION: Vendor's EBO Program shall generate a minority business participation level of at least fifteen percent (15%) of its expenditures, excluding network television advertising buys and outdoor billboard advertising buys. These two categories have been eliminated from possible minority participation purchases due to the lack of minority ownership of outdoor billboards of the size required by the TEL and the lack of minority owned television stations in Tennessee. With the elimination of the above noted categories of expenses, the Tel's anticipated advertising budget available for minority participation dollars, for the first two full years of operation is reduced to an estimated value of \$19,520,000.00.

The successful bidder/proposer is required to finalize and submit this form prior to execution of a contract. Joint Venture Agreements, partnering agreements and all pertinent information must be presented in accordance with Section 3(b) of this Agreement. The finalized EBO Form B shall not be changed or altered after award of a contract without approval from the Corporation. The Vendor is required to provide written notice describing the reasons for the change to the Corporation to obtain approval of any changes to EBO Form B.

Submitted by:

Authorized Representative Signature

Title

Date